GA 267/96

CF0000059432

XII-189 / (Jail)
C. J. P. R. 11/94/2,000

Division Bench (Criminal)

APPEAL OF PRISONER

No. 3347/50 Name વહોરન

Father's name ખોજા ત્મામ ખાં ખાદિકન જિલા પુર થાના બેકુઝકુર

Residence જિલા અરજુના (મ.પ્ર) Age ૩૦ વર્ષ

Sentenced to આજીવન કારવાસ On ૨/૧૧/૯૬

Under section ૩૦૨ મીપ્રુનિ by અતિ.સત્ર.ન્યાયાધીશ સરગુજા (મ.પ્ર.)

It is explained to the prisoner that if he states or wishes to be represented by legal practitioner the Appellate Court will not proceed with the base for seven days unless the legal practitioner appears. If the legal practitioner does not appear within seven days he may not heard at all. If the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1 Date of Application for copy of Judgement ...2/11/96

2 Date on which copy received ... 19.11.96

3 Date on which Appeal sent ... 11.96

4 Whether the prisoner wishes to be represented or ~~not~~ – Yes / No

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No.... 3347/50 Name વહોરન આત્મા ખાં

Confined in ... જેલ Jail ... સરગુજા (મ.પ્ર.)

No. 76 /Law/ Dated ... 1996 ... 23/11/96

Forwarded to the ~~CHIEF JUDICIAL MAGISTRATE~~ અતિ. સેશન્સ ન્યા. ૩૦૨ મી.પ્રુ.નિ. ૧૯૭૪ (મ.પ્ર.) સરગુજા

togather which a copy of judgement or order passed in the case for favour of transmission to the proper Appellate Court.

નિયમિત અપિલ કરવા સંબંધે
સજા-મરણ તા ૩૦/૧૧/૯૬

Superintendent
Central Jail Jabalpur (M.P.)

Date of receipt in ... office ...

Date of receipt record to accompany the ...

Memo of Appeal to the Appellate court ...

No ... Dated ... 199 ...

Forwarded to the ...

Date of receipt in Appellate Court ...

High Court of Madhya Pradesh
JABALPUR
6 FEB 1996
Reg. No. 99
Recpt Clerk
High Court, Jabalpur

(P. T. O.)

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(22)

आदेश पत्रक

मामला क्रमांक C.A. 267/96 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	D.B: Hon'ble Shri L.C.Bhadoo, Hon'ble Shri V.K.Shrivastava, JJ 15.12.2005 Shri Ratindra Mishra for the appellant. Shri Akhil Mishra, P.L. for the State. Oral judgment. This appeal is directed against the judgment of conviction and order of sentence dated 8.1.1996 passed by Addl. Sessions Judge, Baikunthpur, District Surguja in sessions case No.7/95 whereby the learned Addl. Sessions Judge after holding the accused appellant guilty for the commission of offence under Section 302 for committing murder of his wife Raj Kunwar sentenced him to undergo imprisonment for life. The case of the prosecution, in brief, is that on 1.9.1994 Laxman Singh (P.W.2) lodged the report at Police Outpost Charcha to the effect that at about 3.00 P.M. Motilal (P.W.1) came to his house and informed that accused Bahoran has committed the murder of his wife. On hearing	

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आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित - 2 -	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

this, he alongwith Motilal (P.W.1), Ramdhani (P.W.7), Rama and others went to the house of Bahoran Pando and saw that there were injuries on the head of the wife of Bahoran and she was dead. On an enquiry, Bahoran made extra judicial confession before them that he murdered his wife with an axe. The above report Ex.P.7 was registered and the same was registered by the Police Station Baikunthpur at No.48/94 (Ex.P.8).

Assistant Sub-Inspector Asgar Ali P.W.6 conducted the investigation, went to the place of occurrence and prepared the *Panchnama* Ex.P.4 of the body of Raj Kunwar after giving notice to the *Panchas*. The body was sent to the Community Health Centre, Baikunthpur for post-mortem examination where Dr. R.K.Sharma, Dr. R.N.Rajoria and Dr. Rakesh Chaturvedi P.W.4 conducted the post-mortem on the body of Raj Kunwar and prepared the post-mortem report Ex.P.10 in which they noticed as many as 15 injuries. During investigation the accused gave information Ex.P.1 under Section 27 of

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आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

the Evidence Act regarding the place where he kept the axe, the weapon of offence. In pursuance thereof, he got recovered the axe under Ex.P.2.

After completion of the investigation, charge sheet was filed in the Court of Judicial Magistrate First Class, Baikunthpur who in turn committed the case to the Sessions Court, Surguja from where the Additional Sessions Judge received the case on transfer for trial.

The prosecution in order to establish the charge against the accused examined as many as 9 witnesses. Statement of accused was recorded under Section 313 Cr.P.C. in which he has stated that he has been falsely implicated and Motilal Patel was having grudge against him because he was not giving his labour charges ~~and~~ he therefore, he stopped going to the work at the place of Motilal, as such, he has been falsely implicated the crime by Motilal.

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आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित — 4 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Learned Addl. Sessions Judge after hearing the arguments of the Addl. Public Prosecutor and counsel for the accused appellant convicted and sentenced him as mentioned in paragraph-1 of this judgment.

We have heard the learned counsel for the parties Mr. Ratindra Mishra and Addl. Public Prosecutor. Counsel for the accused appellant has not disputed the fact of the death of Raj Kunwar as homicidal in nature. Apart from that, the evidence of P.W.1 Motilal before whom the accused made extra judicial confession and the evidence of P.W.4 Dr. R. Chaturvedi who conducted the post-mortem on the body of Raj Kunwar, has stated that there were 15 injuries on the body of Raj Kunwar. The 4th, 5th, 6th and 7th ribs were found fractured. Injuries No.1 to 14 were caused by the hard and blunt object and injury No.15 numerous abrasions were caused by nail like thing. The cause of death was due to rupture of the lung and injury of head and was homicidal. Therefore, in view of the above medical evidence and extra judicial confession, it is established that the death of Raj Kunwar was homicidal in nature.

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आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	As far as the involvement of the accused appellant in committing murder of his wife is concerned, learned counsel for the appellant argued that there is no eye witness in this case and the conviction is merely based on the extra judicial confession said to have been made before Motilal, Laxman Singh and others and Laxman Singh has stated in his cross-examination that he had not heard the extra judicial confession from the mouth of the accused and other witnesses have turned hostile, therefore, the conviction is not based on reliable evidence. On the other hand, Mr.Akhil Mishra, P.L. supported the judgment of the trial Court. Having heard the counsel for the parties, we have perused the judgment of the trial Court and the evidence. It is true that in this case there is no direct ocular evidence to prove the charge against the accused appellant. The conviction is based on extra judicial confession made by the accused and the recovery of the weapon of offence at his instance, but in order to convict an accused based on the extra judicial	

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आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -6-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

confession, the Court is required to ensure that the extra judicial confession made was voluntary and true. If the Court finds that extra judicial confession made was voluntary and true, the conviction can be based on extra judicial confession. P.W.1 Motilal is *Patel* of the Village and he has stated that on the fateful day at about 3.00 P.M. one Ramdhani came and informed him that Bahoran has murdered his wife. Being *Patel*, he went to the house of the accused along with Ramdhani and Laxman, in their presence he enquired from the accused that how Raj Kunwar had died, upon which, the accused made extra judicial confession that he has murdered his wife and after turning face he had shown the injuries which were behind the head. In the cross-examination, he has denied the suggestion of the defence counsel that he had not enquired from the accused about the cause of death of Raj Kunwar. P.W.2 Laxman Singh has also corroborated the evidence but in cross-examination he has stated that it is correct to say that he had not heard from the accused that he murdered his wife with the axe.

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आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -7-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Therefore, only the evidence of P.W.1 Motilal remains to be considered regarding extra judicial confession made before him by the accused. The extra judicial confession made by the accused before Motilal is established from the fact of P.W.4 Dr. R. Chaturvedi who along with other doctors conducted post-mortem on the body of Raj Kunwar, has stated that there were 15 injuries on the body of deceased. Injury No.1 was on the right side. The lacerated wound was on the right side above ear in the size of 2 cm x 1 cm upto bone deep. There was incised wound on right side forehead in the size of 3 cm. x 1 cm. upto bone deep and obliquely placed. Another lacerated wound was under the left eye in the side of 2 cm. x ½" cm. There was a lacerated wound above left eye brow in the size of 1 cm. x ½' cm. A lacerated wound on left forehead in the size of 1 cm. x ½" cm. obliquely placed deep upto the bone. There were two lacerated wounds on the back of the head on left side and the second was at the distance of 1" from the first lacerated wound and there were other abrasions. The doctor has stated that the weapon of

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आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

offence, axe was sent for his opinion and he noticed the injuries and the injuries No.1 to 6 could have been caused by the axe. Therefore, in view of this medical evidence, the evidence of Motilal regarding extra judicial confession made by the accused stands corroborated and in the cross-examination of this witness nothing has come which shows that this witness has deposed against the accused appellant on account of animosity or any other reason and on the point of that he has falsely implicated the accused. The fact that the accused refused to work at his place is belied from the fact that the same has not been put to this witness in cross-examination. The weapon of offence, the axe, was recovered at the instance of the accused on the basis of information Ex.P.1 given under Section 27 of the Evidence Act.

In view of the above discussion, we are of the considered opinion that the chain of circumstances complete and the accused was the author of the crime in question and the finding of trial Court convicting the accused for commission of murder of Raj Kunwar, it does not require

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आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -9-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

any interference by this Court. Therefore, this appeal being devoid of merits is liable to be dismissed and it is dismissed.

Sd/-
L.C.BHADOO
Judge

Sd/-
V.K.Shrivastava
Judge

Endt. No.26829 Dated 23.12.05
Copy of order alongwith Records to the ... Session Judge/C.J.M. ...